

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

No. 6:20-cv-00170

Johnny Len Kellogg, #120551,
Plaintiff,

v.

Maxey Cerliano,
Defendant.

ORDER

This action was referred to United Magistrate Judge John D. Love pursuant to 28 U.S.C. § 636. Doc. 3. On January 22, 2021, the magistrate judge issued a report (Doc. 23) recommending that defendant's motion for summary judgment (Doc. 19) be granted because defendant is entitled to qualified immunity on plaintiff's claims. The report reasoned that the plaintiff did not show either a constitutional violation or physical injury. These deficiencies barred suit against the defendant in his official capacity and damages under the Prison Litigation Reform Act, respectively. Accordingly, the report recommended that plaintiff's claims be dismissed with prejudice.

This court reviews the findings and conclusions of the magistrate judge de novo only if a party objects within fourteen days of service of the report and recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1). Here, plaintiff did not file objections in the prescribed period. The court therefore reviews the magistrate judge's findings for clear error or abuse of discretion and reviews his legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*,

864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a magistrate judge's report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law").

The court finds no "clear error on the face of the record." *Douglass*, 79 F.3d at 1420. Accordingly, the report and recommendation (Doc. 50) is **accepted**. Defendant's motion (Doc. 19) is **granted**. Plaintiff's claims against defendant are **dismissed with prejudice**. All motions not previously ruled on are **denied as moot**.

So ordered by the court on February 24, 2021.



J. CAMPBELL BARKER
United States District Judge